



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2014-0401; FRL-9918-19-Region 7]

**Approval and Promulgation of Implementation Plans; State of
Kansas; Infrastructure SIP Requirements for the 2008 Ozone
National Ambient Air Quality Standard**

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve elements of a State Implementation Plan (SIP) submission from the State of Kansas addressing the applicable requirements of Clean Air Act (CAA) sections 110 for the 2008 National Ambient Air Quality Standards (NAAQS) for Ozone (O₃), which requires that each state adopt and submit a SIP to support implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as "infrastructure" SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: This final rule is effective [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2014-0401. All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219 from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219; *telephone number:* (913) 551-7214; *fax number:* (913) 551-7065; *email address:* kemp.lachala@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we refer to EPA. This section provides additional information by addressing the following questions:

- I. Background
- II. Summary of SIP Revision
- III. EPA's Response to Comments
- IV. Final Action
- V. Statutory and Executive Order Review

I. Background

On July 16, 2014 (79 FR 41476), EPA published a notice of proposed rulemaking (NPR) for the State of Kansas. The NPR proposed approval of Kansas' submissions that provide the basic elements specified in section 110(a)(2) of the CAA, or portions thereof, necessary to implement, maintain, and enforce the 2008 Pb NAAQS.

II. Summary of SIP Revision

On March 19, 2013, and May 9, 2013, EPA received SIP submissions from the state of Kansas that address the infrastructure elements specified in section 110(a)(2) for the 2008 O₃ NAAQS. The submissions addressed the following infrastructure elements of section 110(a)(2): (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). Specific requirements of section 110(a)(2) of the CAA and the rationale for EPA's proposed action to approve the SIP submission are explained in the NPR and will not be restated here.

The public comment period on EPA's proposed rule opened on July 16, 2014, the date of its publication in the **Federal Register**, and closed on August 15, 2014. During this period, EPA received two comment letters: one from a citizen received July 17, 2014, and one from the Kansas Department of Health and Environment (KDHE) received August 13, 2014. The letters are available in the docket to today's final rule. The citizen comment was made in support of EPA's efforts to protect the environment in the state of Kansas, and did not result in changes to this final action. Today's final action includes EPA's response to KDHE's comment.

III. EPA's Response to Comments

Comment: KDHE commented that EPA retract certain language in the proposed rulemaking for today's final action. Regarding section 110(a)(2)(E)(3), the proposed rulemaking states at 79 FR 41493: "Currently, KDHE oversees the following local agencies that implement the Kansas Air Quality Act: The City of Wichita Office of Environmental Health, Johnson County Department of Health and Environment, Shawnee County Health Agency, and Unified Government of Wyandotte County-Kansas City, Kansas Public Health Department". Regarding section 110(a)(2)(M), the proposed rulemaking states at 79 FR 41496: "Currently, KDHE's Bureau of Air and Radiation has signed state and/or local agreements with the Department of Air Quality from the Unified

Government of Wyandotte County-Kansas City, Kansas; the Wichita Office of Environmental Health; the Shawnee County Health Department, the Johnson County Department of Health and Environment; and the Mid-America Regional Council". KDHE states that as of September 30, 2012, they no longer contract with the Shawnee County Health Department.

Response: EPA acknowledges that KDHE no longer oversees or contracts with the Shawnee County Health Department for purposes of sections 110(a)(2)(E)(3) and 110(a)(2)(M).

IV. Final Action

EPA is approving Kansas' submissions which provide the basic program elements specified in section 110(a)(2)(A), (B), (C), (D)(i)(II) (prongs 3 and 4), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA, or portions thereof, necessary to implement, maintain, and enforce the 2008 O₃ NAAQS, as a revision to the Kansas SIP. This action is being taken under section 110 of the CAA. As discussed in each applicable section of NPR, EPA is not acting on section 110(a)(2)(D)(i)(I), section 110(a)(2)(I) - Nonattainment Area Plan or Plan Revisions Under Part D, and on the visibility protection portion of section 110(a)(2)(J).

V. Statutory and Executive Order Review

Under the CAA the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, ozone, and Reporting and recordkeeping requirements.

Dated: September 24, 2014

Karl Brooks,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as set forth below:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart R - Kansas

2. In §52.870(e) the table is amended by adding new entry (38) in numerical order at the end of the table to read as follows:

§ 52.870 Identification of plan.

* * * * *

(e)***

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or Nonattainment area	State submittal date	EPA approval date	Explanation
* * * * *				
(38) Section 110 (a) (2) Infrastructure Requirements for the 2008 O ₃ NAAQS	Statewide	3/19/2013	[Insert Federal Register date of publication and [Insert Federal Register citation]	This action addresses the following CAA elements: 110(a)(2) (A), (B), (C), (D)(i)(II) (prongs 3 and 4), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) except as noted.

[FR Doc. 2014-24781 Filed 10/20/2014 at 8:45 am; Publication Date: 10/21/2014]